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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/708,766	11/07/2000	James F. Gausling	430672000101	4160

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MORRISON & FOERSTER LLP
755 PAGE MILL RD
PALO ALTO, CA 94304-1018

EXAMINER

BREVARD, MAERENA W

ART UNIT	PAPER NUMBER
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3727

14

DATE MAILED: 03/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/708,766

Applicant(s)

GAUSLING ET AL.

Examiner

Maerena W. Brevard

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 and 24-26 is/are rejected.
- 7) ☒ Claim(s) 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In view of the appeal brief filed on July 21, 2003, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the body comprising a single, seamless, continuous member (Claims 3 and 12), the hip belt (Claims 8-11 and 16), and the distal ends of the two shoulder support members connected to each other (Claim 25) must be shown or the feature canceled from the claim. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 3, 12, 25 and 26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. There is no disclosure on how to make the backpack seamless and there is insufficient disclosure for the distal ends of the shoulder support members connected to each other.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 3, 12, 25, and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3 and 12 are indefinite since it is unclear how the backpack would be made seamless.

Claim 25 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the distal ends of the two shoulder support members connected to each other. The disclosure does not teach or show how this is done.

The dependent claims not specifically mentioned are rejected as being dependent upon a rejected base claim, since they inherently contain the same deficiencies therein.

Claim Rejections - 35 USC § 102

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1, 3, 4, 5, and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Sizemore.

Sizemore discloses an ergonomic backpack comprising:

- A backpack body (1);
- A plurality of shoulder support members (2), each having a proximal end connected to the body at a first transition region (Figure 3);
- The body comprises a single, seamless, continuous member to the degree applicant claims;
- The backpack is comprised of nylon with a fineness between 500 denier and 1050 denier (Column 5, lines 27-28); and
- A plurality of straps (Figures 1-3).

9. Claims 1-4 and 6-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Clements.

Clements discloses an ergonomic backpack comprising:

- A backpack body (1);
- A plurality of shoulder support members (11), each having a proximal end connected to the body at a first transition region (Appendix A, Figure 4);

- At least one side support member (Appendix B) disposed adjacent a lateral side region having a proximal end connected to the backpack body at a second transition region between the outer region and the lateral side region and a distal end connected to one of the shoulder support members;
- An adjustable hip belt (12) attached to the backpack body, wherein the hip belt is comprised of two pieces, each respectively attached to a lateral side (Figures 4 and 5);
- The body comprises a single, seamless, continuous member to the degree applicant claims;
- The backpack is comprised of nylon;
- A yoke (Appendix A) disposed along the backpack body top region and connected to each shoulder support member;
- The bottom region of the backpack has a stiffness (20) higher than a stiffness of the rest of the backpack body;
- A plurality of straps (Figure 1);
- The adjustable hip belt (12) is attached to the backpack body at one or more of the straps (Figure 1);
- The first hip belt piece is attached to a first lateral side region and the second hip belt piece is attached to a second lateral side region of the backpack body (Figures 4 and 5);

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- Two side support members (Appendix B), each disposed adjacent the first and second lateral side regions, respectively, and each connected to the backpack body at a second transition region and a shoulder support member;
- The distal end of each shoulder support member is connected to the backpack body at a second transition region (Appendix B) between the outer region of the backpack and a lateral side region of the backpack (Figure 6), to the same degree applicant claims;
- A plurality of straps comprising four or more straps, wherein the first two of said straps (9) are parallel to one another and wherein the other two of said straps (28) are parallel to one another and perpendicular to the first two of said straps; and
- Each of the first two and second two straps are spaced apart from each other to define an aperture (Figure 2, enclosed by 7) through which the interior of the backpack body is accessible.

10. Claims 1, 3, 6, 7, 15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Floyd, Great Britain Patent No. 1400.

Floyd discloses an ergonomic backpack comprising:

- A backpack body (Figures 1 and 2) comprising a plurality of straps;
- A plurality of shoulder support members (c), each member having a distal end (bottom portion) and a proximal end (top portion), each proximal end connected to the backpack body at a first transition region (at buckle) between a top region (d) and an outer region (edge) of the backpack body (Figure 1);

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- The backpack body is a single, seamless, continuous member, to the same degree claimed; and
- A yoke (a) disposed along the backpack body top region and connected to each shoulder support member.

Double Patenting

11. Claims 1, 2, 6, 7, 10, 14, 15, 17, 18, 21, 22, and 24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 14, 16, 18, and 19 of U.S. Patent No. 6,164,509. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim the same subject matter.

12. Claims 4, 5, and 13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,164,509 in view of Sizemore. The U.S. Patent No. 6,164,509 discloses all of the limitations of the claims, except the backpack body comprised of nylon or a fineness of between 500 denier and 1050 denier. However, Sizemore teaches a backpack comprised of nylon with a fineness between 500 denier and 1050 denier (Column 5, lines 27-28). It would have been obvious to make the backpack disclosed in U.S. Patent No. 6,164,509 of nylon with a fineness between 500 denier and 1050 denier, as taught by Sizemore. Doing so would provide a sturdier, more resilient backpack.

Allowable Subject Matter

13. Claim 23 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. Claims 25 and 26 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion


15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Martz, Reddy et al., Arnade, Knutsen, and Herzberg are cited for ergonomic backpacks.


16. This action is non-final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maerena W. Brevard whose telephone number is 703/305-0037. The examiner can normally be reached on M-Th; 8:00 AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703/308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Maerena Brevard
March 1, 2004

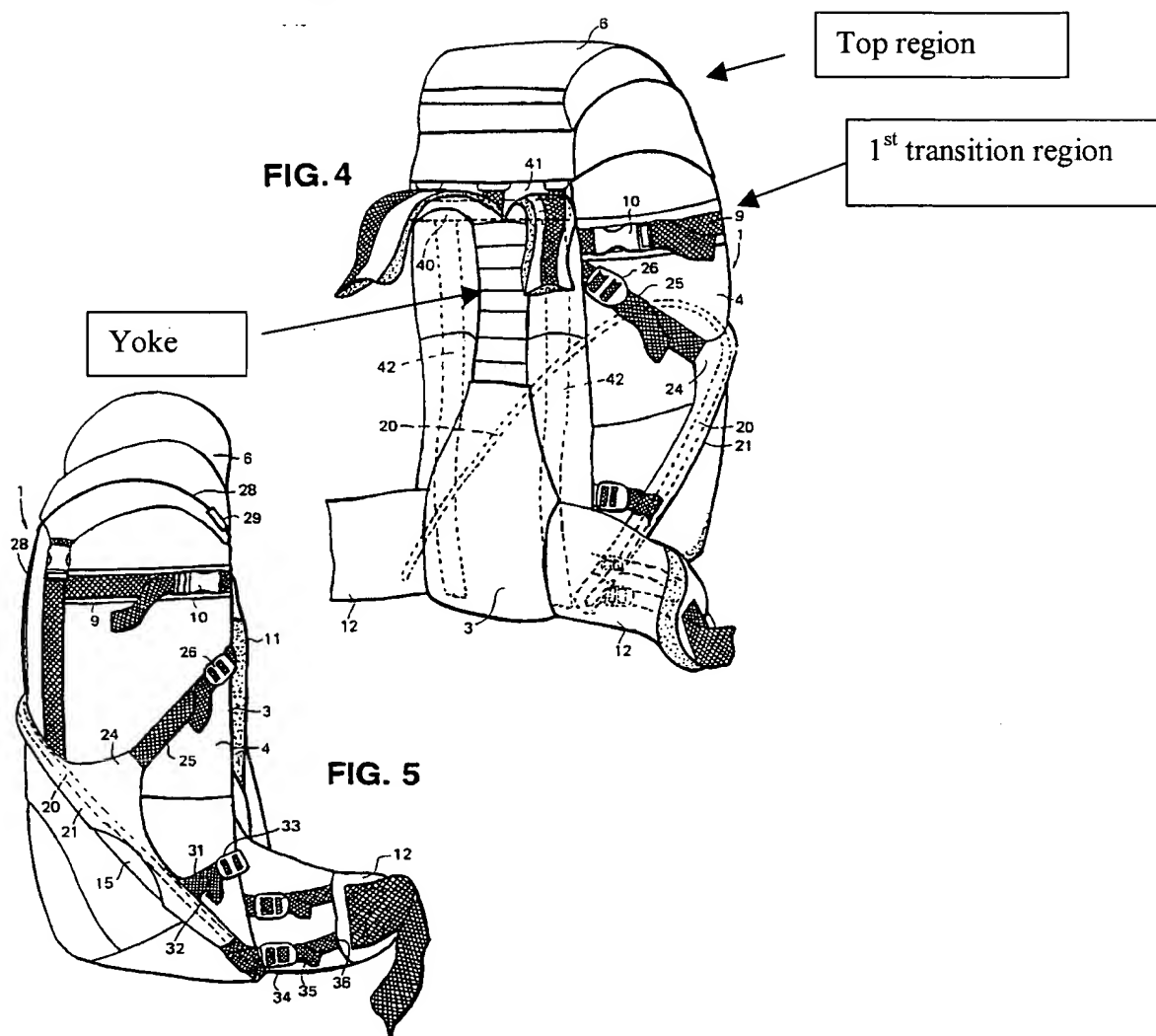

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APPENDIX B

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